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23 **UNITED STATES DISTRICT COURT**
24 **DISTRICT OF NEVADA**

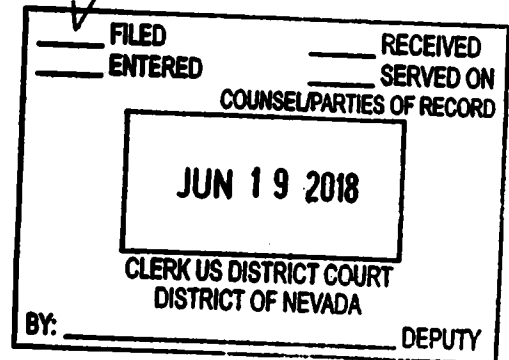
25 ADDISON HEMPEL, CASSIDY
26 HEMPEL, CHRISTINE HEMPEL, HUGH
27 HEMPEL, and SOLUTION
28 THERAPEUTICS,

Plaintiffs,

v.

29 CYDAN DEVELOPMENT, INC.,
30 CYDAN II, INC., VTESSE, INC.,
31 SUCAMPO PHARMACEUTICALS,
32 INC., and DOES I-X and ROE
33 CORPORATIONS I-V, inclusive,

Defendants.



Case No. 3:18-cv-00008-MMD-VPC

STIPULATION AND
[PROPOSED] PROTECTIVE ORDER

1 The parties having agreed to the following terms of confidentiality, and the Court having
2 found that good cause exists for issuance of an appropriately-tailored confidentiality order gov-
3 erning this action, it is therefore hereby

4 ORDERED that any person subject to this Stipulation and Protective Order (“this Or-
5 der”)—including without limitation the parties to this action, their representatives, agents, experts
6 and consultants, all third parties providing discovery in this action, and all other interested persons
7 with actual or constructive notice of this Order—shall adhere to the following terms:

8 1. Scope. This Order shall govern all information produced in connection with this
9 action in any form to any persons, including, without limitation, deposition testimony and exhibits,
10 testimony taken at a hearing or other proceeding, interrogatory answers, documents and other dis-
11 covery materials (whether produced informally or in response to interrogatories), requests for ad-
12 missions, requests for production of documents, or other formal methods of discovery. This Order
13 shall also govern all information produced, exchanged, or served in this action pursuant to required
14 disclosures under any federal procedural rule, and any supplementary disclosures thereto.

15 2. Confidentiality. Any person subject to this Order who receives from any other per-
16 son any information of any kind—whether document, testimony, or any other form—provided in
17 the course of this action (“Discovery Material”) that is designated as “Confidential” pursuant to
18 the terms of this Order shall not disclose such Confidential Discovery Material to anyone else
19 except as expressly permitted by this Order.

20 3. Definition of “Confidential.” The person producing any given Discovery Material
21 may designate as “Confidential” any Discovery Material or portion of Discovery Material that
22 contains non-public business, commercial, financial, or personal information within the meaning
23 of Fed. R. Civ. P. 26(c)(1)(G), the public disclosure of which is either restricted by law or could,
24 in the good faith opinion of the producing person, adversely affect a person’s or entity’s privacy
25 interests or obligations or a person’s or entity’s policy, business, commercial, financial, or personal
26 interests.

5. **Designation of Confidential Discovery Material after Production.** The failure to designate Discovery Material as Confidential at the time of production shall not constitute a waiver of such designation. At any time prior to the trial of this action, any Discovery Material produced without a “Confidential” designation may be designated by any party as Confidential by informing all parties in writing that the Discovery Material should be treated as Confidential under this Order. Upon receipt of such notice, all parties and persons subject to this Order shall treat such information consistent with the redesignation going forward.

6. Use of Confidential Information. Each party and all persons bound by the terms of this Order shall use any Discovery Material designated Confidential only in connection with the prosecution or defense of this action, except by consent of the designating and producing parties or by order of the Court; provided, however, that the foregoing shall not apply to Discovery Material that is or becomes part of the public record or otherwise falls under one of the exceptions described below in paragraph 13.

7. Disclosure of Confidential Information. No person subject to this Order shall disclose any Discovery Material designated as Confidential to any other person, except:

a. the parties to this action, including their affiliates and their current and former agents and employees who are assisting with or making decisions concerning this action, to the extent deemed reasonably necessary by counsel of record for the purpose of assisting in the prosecution or defense of this action, and provided such persons have first executed the Non-Disclosure Agreement attached to this Order;

- 1 b. counsel retained specifically for this action, including any paralegal, clerical, and other
- 2 assistant employed by such counsel and assigned to this matter;
- 3 c. the author of the Confidential Discovery Material, and any person indicated on the face of
- 4 the material as having received a copy of it;
- 5 d. any witness called to testify at deposition or any witness whom counsel for a party in good
- 6 faith believes may be called to testify at trial or deposition in this action, provided such
- 7 person has first executed the Non-Disclosure Agreement attached to this Order;
- 8 e. any person retained by a party to serve as an expert witness or otherwise provide special-
- 9 ized advice to counsel in connection with this action and their staffs, provided such person
- 10 has first executed the Non-Disclosure Agreement attached to this Order;
- 11 f. court reporters, videographers, and their respective staffs employed in connection with this
- 12 action; and
- 13 g. the Court and Court personnel.

14 Prior to any disclosure of any Confidential Discovery Material to any person referred to above in
15 subsections (a), (d), and (e), such person shall be provided by counsel with a copy of this Order
16 and shall sign the Non-Disclosure Agreement attached to it. Counsel shall retain each signed Non-
17 Disclosure Agreement.

18 8. Filings Under Seal. The parties will use reasonable efforts to minimize the use of
19 Confidential Discovery Material in court filings. Unless otherwise permitted by statute, rule, or
20 prior court order, papers filed with the court under seal shall be accompanied by a contemporane-
21 ous motion for leave to file those documents under seal, and shall be filed consistent with the
22 court's electronic filing procedures in accordance with Local Rule IA 10-5. Notwithstanding any
23 agreement among the parties, the party seeking to file a paper under seal bears the burden of over-
24 coming the presumption in favor of public access to papers filed in court. *Kamakana v. City &*
25 *Cnty. of Honolulu*, 447 F.2d 1172 (9th Cir. 2006); *Pintos v. Pac. Creditors Ass 'n*, 605 F.3d 665,
26 677-78 (9th Cir. 2010). A party wishing to include Confidential Discovery Material in a court

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1 filing shall give the designating party prior notice and an opportunity to request that the material
2 be filed under seal.

3 9. Court Proceedings and Trial. Nothing in this Order restricts the parties' rights to
4 use Confidential Discovery Material in court proceedings or as trial exhibits. If Confidential Dis-
5 covery Material is used in open court during any court proceeding or filed as a trial exhibit, the
6 material shall lose its confidential status and become part of the public record unless a party applies
7 for and obtains an order from this Court specifically maintaining the confidential status of partic-
8 ular material. Prior to any court proceeding in which Confidential Discovery Material might be
9 used, counsel for the parties shall confer in good faith on the appropriate procedures for protecting
10 the confidentiality of such material.

11 10. Objections to Designations and Heighted Designations. Any party who either ob-
12 jects to any designation of confidentiality, or who requests further limits on disclosure (such as
13 "attorneys' eyes only" in extraordinary circumstances), may at any time prior to the trial of this
14 action serve upon counsel for the opposing party a written notice stating with particularity the
15 grounds of the objection or request. If the parties cannot reach a prompt agreement respecting the
16 objection, the parties may seek a ruling from the Court.

17 11. Inadvertent Disclosure of Confidential Discovery Material. Each person who has
18 access to Discovery Material that has been designated as Confidential shall take all due precautions
19 to prevent the unauthorized or inadvertent disclosure of such material. In the event that such ma-
20 terial is disclosed to any person other than in the manner authorized by this Order, the party re-
21 sponsible for the disclosure or loss of confidentiality shall immediately inform the party that pro-
22 duced the material of all pertinent facts relating to the disclosure or loss of confidentiality, includ-
23 ing the identities of the persons to whom the disclosure was made. The party responsible for such
24 disclosure shall make reasonable efforts to prevent further disclosure or loss of confidentiality.

25 12. Inadvertent Production and Clawback of Privileged Information. If, in connection
26 with this action, a party inadvertently discloses information subject to a claim of attorney-client
27 privilege or work-product protection ("Inadvertently Disclosed Information"), such disclosure
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1 shall not constitute or be deemed a waiver or forfeiture of any claim of attorney-client privilege or
2 work-product protection with respect to the Inadvertently Disclosed Information and its subject
3 matter. If a party determines that it has produced Inadvertently Disclosed Information, it shall
4 notify the party receiving the information of this fact in writing ("Clawback Request"). Upon
5 receipt of such notification, the receiving party shall refrain from any further examination and
6 disclosure of the claimed Inadvertently Disclosed Information and shall, within five business days,
7 destroy all copies of the Inadvertently Disclosed Information and any documents and things that
8 contain information derived from such Inadvertently Disclosed Information, and provide a certifi-
9 cation of counsel that all such information has been returned or destroyed. A receiving party may
10 move the Court for an order compelling production of the Inadvertently Disclosed Information.
11 The motion shall be filed under seal and shall not assert as a ground for entering such an order the
12 fact of or circumstances surrounding the inadvertent production or subsequent Clawback Request.
13 For purposes of this section, it shall be irrelevant which party initially discovers the inadvertently
14 or mistakenly produced items that are otherwise properly subject to a claim of attorney-client priv-
15 ilege or work-product protection.

16 13. Exceptions to Confidential Status. This Order shall not apply to information that
17 is or was available to the public prior to disclosure. The restrictions contained in this Order shall
18 not apply to information that is, was, or becomes available to the public other than by an act or
19 omission of the party to whom such disclosure is made, or that is legitimately and independently
20 acquired from a source not subject to this Order. This Order shall not apply to and, thus, does not
21 restrict any party's use or disclosure, for any purpose, of its own Confidential Discovery Material.

22 14. Third Parties. The terms of this Order apply to Confidential information obtained
23 from or provided by a nonparty. Information provided by a nonparty in connection with this action
24 and designated Confidential pursuant to the terms of this Order shall be protected by the remedies
25 and relief provided by this Order. A nonparty who produces Confidential Discovery Material in
26 accordance with this Order may seek to enforce this Order in this litigation. The parties shall
27 include this Order along with any subpoenas they serve on any nonparties.

1 15. Subpoenas. If any person in possession of Confidential Discovery Material re-
2 ceives a subpoena or other compulsory process ("Demand") seeking the production or disclosure
3 of such material, that person shall give written notice to counsel for the party that designated the
4 Discovery Material as Confidential within 14 days of receipt of the Demand. The written notice
5 shall identify the Confidential Discovery Material sought and provide a copy of the Demand itself.
6 The person receiving the Demand must object to the production of the Confidential Discovery
7 Material on the grounds of this Order. Nothing herein shall be construed as requiring a person
8 receiving Confidential Discovery Material or anyone else covered by this Order to challenge or
9 appeal any order requiring production of Confidential Discovery Material covered by this Order,
10 or to subject itself to any penalties for noncompliance with any legal process or order, or to seek
11 any relief from this Court or any other court. Compliance with a Demand will not constitute a
12 violation of this Order.

13 16. Survival. This Order shall survive the termination of this action. Within 60 days of
14 the final disposition of this action, including all possible appeals, all Discovery Material designated
15 as "Confidential," including copies, shall be destroyed. However, outside counsel for the parties
16 shall be entitled to retain court papers, deposition and trial transcripts, and litigation files (including
17 attorney work product and Confidential Discovery Material), provided that such counsel and em-
18 ployees for such counsel shall maintain the confidentiality thereof and shall not disclose such ma-
19 terials to any person except pursuant to a court order or agreement with the designating and pro-
20 ducing parties or otherwise required by law.

21 17. Order Not a Waiver or Admission. This Order shall not be construed as an admis-
22 sion by any party that any document or other evidence is discoverable, relevant, authentic, or ad-
23 missible or as a waiver of any right to object to the discoverability, relevance, authenticity, or
24 admissibility of any document or other evidence. Further, nothing in this Order constitutes an ad-
25 mission by any party that any Confidential Discovery Material is a trade secret or is otherwise
26 confidential and/or proprietary to a party. The parties acknowledge that they may decline to dis-
27 pute the designation of Discovery Material as "Confidential" for purposes of this Order and this
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1 action merely as a matter of convenience and discovery efficiency. The designation of Discovery
2 Material as "Confidential" shall not be admissible as evidence that the Discovery Material is con-
3 fidential or a trade secret or that any person or party believes the Discovery Material to be confi-
4 dential or a trade secret. The parties specifically reserve the right to argue that Discovery Material
5 is not confidential and/or not a trade secret notwithstanding its designation as such in this action.

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7 DATED: June 18, 2018

8 /s/ David C. O'Mara

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COUNSEL FOR PLAINTIFFS

IT IS SO ORDERED

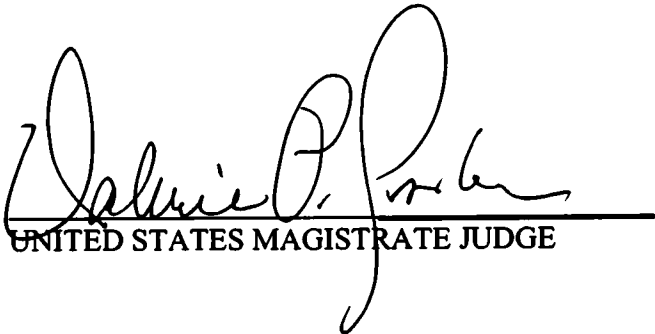
Dated: June 19, 2018

/s/ E. Leif Reid

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COUNSEL FOR DEFENDANTS


UNITED STATES MAGISTRATE JUDGE

NON-DISCLOSURE AGREEMENT

I, _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulation and Protective Order that was issued by the United States District Court for the District of Nevada on _____ in case No. 3:18-cv-00008. I agree to comply with and to be bound by all the terms in this Order, and I understand and acknowledge that failure to so comply will expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclosure in any manner any information that is subject to this Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Nevada for the limited purpose of the enforcement of this Order, even if such enforcement occurs after termination of this action.

Dated: _____ Signed: _____